

Rule 4001-1. Relief From Automatic Stay.

(A) Notice Requirements. Notice of any motion seeking relief from the automatic stay, pursuant to 11 U.S.C. § 362(d), shall be sufficient if served on the debtor, the debtor's attorney, the trustee, and any person known to the moving party to claim a legal or equitable interest in any property which may be the subject of the motion. In a chapter 11 case, when applicable, service must be in accordance with Local Rule 2002-1(K), otherwise, the notice must be served on the debtor, the debtor's attorney, the trustee, if any, the U.S. trustee, the members of the creditors' committee or the committee's counsel and any other person known to the moving party to claim a legal or equitable interest in any property which may be the subject of the motion; however, if no creditors' committee has been formed then the notice may be served on the creditors holding the 7 largest unsecured claims according to the debtor's list of 20 largest creditors filed in the case.

☞ 2002 Amendment: Subdivision (A) amended to incorporate reference to new rule 2002-1(K).

(B) Contents of Motion. Motions for relief from the automatic stay must contain a short and plain statement of the facts upon which the request for relief is based, including a statement of any "cause" if based on 11 U.S.C. § 362(d)(1), and a statement of the amount of the debt, the estimated value of the collateral and the source of the valuation if based on 11 U.S.C. § 362(d)(2). In an individual chapter 7 case, the motion must also state whether the property has been claimed exempt by the debtor or abandoned by the trustee. If the motion seeks relief to enforce a lien, the following exhibits must be attached to the motion:

- (1) a copy, showing recording information, of any security agreement, mortgage or other lien claim which the moving party seeks to enforce;
- (2) a copy of any note or evidence of the obligation secured by the lien; and
- (3) an affidavit attesting to the amount of the indebtedness.

(C) Requests for Relief On Negative Notice. Creditors in chapter 7, 11, or 12 cases may seek relief from stay on negative notice if the motion meets the requirements of subdivision (B) above, is served in accordance with subdivision (A) above, and includes above the preamble and below the title of the motion the following bulletin in print either highlighted or bold so as to make it more prominent than the remainder of the text:

Any interested party who fails to file and serve a written response to this motion within 15 days after the date of service stated in this motion shall, pursuant to Local Rule 4001-1(C), be deemed to have consented to the entry of an order granting the relief requested in the motion.

When this bulletin is included in the motion, no hearing will be scheduled unless a response is filed. The failure of parties, properly served, to file a response within 15 days after service of the motion

shall be deemed a consent to the granting of the requested relief. After the time to respond has expired, the moving party shall either (a) promptly file the Local Form “Certificate of No Response or Settlement” accompanied by a proposed order pursuant to Local Rule 5005-1(G), or (b) promptly file the Local Form “Certificate of Contested Matter” accompanied by the Local Form “Notice of Hearing” pursuant to Local Rule 9073-1(A). The option provided in this paragraph is not intended to limit the court’s ability to grant or deny relief sooner than 15 days after service of the motion, or the court’s discretion to grant relief without a hearing either by consent of the parties or on verified motions which allege pursuant to 11 U.S.C. § 362(f) that immediate irreparable harm will result from the failure to grant emergency relief without a hearing. A party filing a motion for relief from stay pursuant to this subdivision is deemed to have consented to voluntarily extending, to a date 30 days after the filing of a Local Form “Certificate of Contested Matter” by the party filing the motion for relief from stay, the provision of 11 U.S.C. § 362(e) which provides for termination of the automatic stay within 30 days absent an order of the court continuing the stay.

(D) Contested Motions; Response. A response which objects to the granting of the requested relief shall identify the motion, the movant’s attorney, and the motion’s service date, and shall set forth a short and plain statement of the facts countervailing the motion, including: a statement of indebtedness, if the amount of debt is in dispute; a specific statement of any objection to the authenticity, accuracy or completeness of the moving party’s exhibits; and a statement of how the responding party proposes to adequately protect the moving party’s security interest, if it is the debtor who objected and adequate protection may be necessary; however, the objection of a chapter 7 trustee prior to the § 341 meeting need state only that the § 341 meeting has not yet been held and that the trustee lacks the necessary information to adequately respond further. The response must be served on the movant’s attorney and on the same parties on whom the motion was served. Notice, pursuant to Local Rule 9073-1(C), shall be served on the same parties on whom the motion was served.

(E) Hearing. A hearing scheduled on a motion for relief from the automatic stay will be a final hearing unless the court otherwise notifies the parties in advance. If the court designates the initial hearing as a non-evidentiary hearing, the hearing shall be restricted to the pleadings, affidavits and papers of record and to the arguments of counsel.

(F) Cooperation of Parties in Preparation for Hearing. At least 2 business days prior to an evidentiary hearing, the parties or their counsel must meet in an effort to identify those specific issues of fact or law genuinely in dispute, to exchange copies of appraisals and other exhibits and the names and addresses of witnesses the parties intend to offer at the hearing, and to discuss the possibilities of settlement. At the commencement of the hearing, the parties shall present an exhibit register in accordance with Local Rule 9070-1 and shall announce any stipulations of fact or law.

(G) Discovery. A party may take deposition testimony of any party or witness and may request the production of documents or things and inspection of land, upon actual delivery of at least 10 days’ notice, and the minimum time requirements of Bankruptcy Rules 7030 and 7034 shall not apply. The parties shall make their appraisers or other experts and fact witnesses, if any, available for deposition, without the need for subpoena, at least 2 business days before an evidentiary hearing, and the parties are expected to cooperate in exchanging information and documents without the need for formal discovery procedures. In extraordinary circumstances the court, upon motion of a party

but without notice or hearing, may authorize the use of interrogatories or other discovery procedures, and may shorten the notice requirements of any applicable rule.

(H) Continuances. Continuances are governed by Local Rule 5071-1. A party seeking relief from the automatic stay who moves for continuance of the hearing waives the right to enforce the 30 day rule contained in 11 U.S.C. § 362(e), and the 30 day hearing requirement shall be deemed extended until the court's ruling at the rescheduled hearing.

[Comment: See also 28 U.S.C. § 1930 (clerk's fee required for motions for stay relief), Bankruptcy Rule 9014 (contested matters governed by general rules of discovery) and Local Rules 5071-1 (continuances), 7026-1 and 7027-1 (discovery), and the court's "Guidelines for Preparing Orders".]